

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DINO PALADINO,

Plaintiff,

-v.-

DHL EXPRESS (USA), INC. and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS AIR FREIGHT
CHAUFFERS, HANDLERS, WAREHOUSEMEN
& ALLIED WORKERS UNION NO. 295,

Defendants.

MEMORANDUM AND ORDER

07-CV-1579 (DRH) (ARL)

APPEARANCES:

For the Plaintiff:

Dino Paladino, Pro Se

49 Weaving Lane

Wantagh, New York 11793

For the Defendant DHL Express (USA), Inc:

Thompson Wigdor & Giley LLP

85 Fifth Avenue

New York, N.Y. 10003

By: Andrew S. Goodstadt, Esq.

Cindy E. Uh, Esq.

**For Defendant International Brotherhood of Teamsters Air Freight Chauffers, Handlers,
Warehousemen & Allied Workers Union No. 295:**

Cary Lane LLP

1350 Broadway, Suite 815

New York, N.Y. 10018

By: Joshua S.C. Parkhurst, Esq.

HURLEY, Senior District Judge:

By Memorandum and Order dated March 26, 2010, the Court granted defendants' motions for summary judgment and directed that the case be closed upon entry of judgment.

Judgment was entered on March 30, 2010. Plaintiff Dino Paladino ("Plaintiff") timely filed a

notice of appeal of that decision on April 27, 2010. Plaintiff, now proceeding *pro se*, requests permission to proceed *in forma pauperis* on his appeal to the Second Circuit. For the reasons that follow, the application is denied.

DISCUSSION

I. *Standard of Review*

A motion to proceed *in forma pauperis* on appeal must be made in the first instance to the district court. *See* Fed. R. App. P. 24(a). An appeal may not be taken *in forma pauperis* if the district court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(4)(B). The Second Circuit has instructed:

Generally an application for leave to appeal *in forma pauperis* will have sufficient substance to warrant consideration only if, in addition to an adequate showing of indigence and of citizenship, it identifies with reasonable particularity the claimed errors which will be the basis for the appeal. If these requirements are satisfied, and if on consideration the trial judge is conscientiously convinced that there is no substantial question for review and that an appeal will be futile, or if he is convinced that there is no reasonable basis for the claims of alleged error, it is the duty of the trial judge, albeit not a pleasant duty, to certify that the appeal is not taken in good faith.

United States v. Farley, 238 F.2d 575, 576 (2d Cir. 1956) (internal citations and quotation marks omitted). ““This threshold level for permitting persons to proceed *in forma pauperis* is not very great and doubts about the substantiality of the issues presented should normally be resolved in the applicant’s favor.”” *Bishop v. Henry Modell & Co.*, 2010 WL 1790385, at *1 (S.D.N.Y. May 4, 2010) (quoting *Miranda v. United States*, 458 F.2d 1179, 1181 (2d Cir. 1972)).

“Nevertheless, ‘good faith is judged by an objective standard, and if an appeal is frivolous it is not taken in good faith.’” *Bishop*, 2010 WL 1790385, at *1 (quoting *Gomez v. United States*, 371

F. Supp. 1178, 1179 (S.D.N.Y. 1974)).

II. Plaintiff's Request to Appeal *In Forma Pauperis* is Denied

Here, Plaintiff's application to proceed *in forma pauperis* does not include any of the "the claimed errors which will be the basis for the appeal." *Farley*, 238 F.2d at 576. Rather, Plaintiff simply states that "the District Court improperly granted summary judgment."

(Pl.'s Decl. ¶ 6, May 3, 2010.) Given that Plaintiff has failed to present any ground for appeal, there is no basis for the Court to grant *in forma pauperis* status for appeal purposes. However, given Plaintiff's *pro se* status on the instant application, the Court has nonetheless reviewed the record. After careful review, and for the reasons stated in the Court's March 26, 2010

Memorandum and Order, the Court finds that Plaintiff's claims lack merit and that there is no substantial question for review. Accordingly, the Court certifies that any appeal would not be taken in good faith and Plaintiff's request to proceed *in forma pauperis* on appeal is denied.

Further requests to proceed *in forma pauperis* should be directed to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED.

Dated: Central Islip, N.Y.
August 4, 2010

Denis R. Hurley,
United States District Judge